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Education

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Response to Consultation Respondents

THE SCHOOL ADMISSIONS (Exceptional Circumstances) REGULATIONS 2010



Introduction

On 18 September 2009 the Department of Education published the School Admissions (Exceptional Circumstances) Regulations 2010 for consultation. The regulations were accompanied by a consultation booklet and respondents were invited to make comments on both documents.

Under Section 75 the Department is required to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

As the equality screening of the regulations indicated neither significant/major implications for equality of opportunity, nor any additional measures to promote good relations, they were assessed as not requiring a full Equality Impact Assessment (EQIA). As part of the consultation the Department also welcomed comments on the Equality and Human Rights screening document associated with the regulations.

The consultation was advertised in the media, and members of the Department of Education; the five Education and Library Boards (ELBs); Council for Catholic Maintained Schools (CCMS); Council for Integrated Education; Comhairle na Gaelscolaíochta (CnaG); all schools; and equality and human rights stakeholders were also invited to submit comments. By the closing date of 14 October 2009 the Department had received a total of 16 responses to this consultation. The list of organisations that responded is attached at Annex A.

This document represents the Department's response to the main questions and queries raised by consultation respondents. The Department's document 'Report of the Responses to the Consultation on the School Admissions (Exceptional Circumstances) Regulations 2010' compliments this document and explains the current situation in relation to the regulations.

A Summary of the Main Questions Received

Respondents raised a number of questions and queries relating to the Exceptional Circumstances Process and regulations. They are summarised in the form of the following nineteen questions and are accompanied by the Department's responses in each case below;

1. Q Will the Exceptional Circumstances Body be adequately resourced to deal with a large number of cases?

A As much as is possible, the Department will ensure that the Body is adequately resourced.

2. Q How will the levels of expertise required in the Panels be established by the Department? Will the Department only appoint 'qualified professionals'?

A The appointment process will make clear the range of skills and areas of expertise that the Body will require. Not all members will be from professional backgrounds but all members will have the necessary skills and relevant background to enable them to make

decisions on the cases before them. Examples of individuals could include but will not be limited to; teachers; social workers; individuals with expertise in school admissions; individuals with expertise in pupils with additional educational needs; medical practitioners for instance psychologists or paediatricians.

3. Q Why is there no deadline for submission of parental applications to the Body? Could requests for additional information make the four weeks from application to hearing target unachievable?

A There is no deadline for submission of parental applications to the Body as the primary legislation simply says that parents 'may apply' to the Body but does not specify when this should happen. The Body cannot limit a parent's ability to fulfil their legal right to make an application in this way. The regulations make clear that the Panel may require parents to provide relevant information within a specified time. This means that in most cases the Panel's deadline for submission of this information should be met. The regulations also state, however, that the hearing should take place within four weeks of the parent's application *or as soon as possible thereafter*. This allows the Body to have a hearing after the four week deadline has passed, where this proves to be necessary.

4. Q Why not have an informal pre-hearing to filter cases that are obviously not exceptional in order to save nugatory work?

A The primary legislation requires that *every* application received from a parent will be subject to a 'hearing' therefore it is not possible to have two different levels of hearing - informal and formal - for different cases. Each case must be heard in the same way.

5. Q Will every application have to be supported by written evidence that an application has been made to the school in question and been refused?

A Whilst written evidence that an application from the pupil in question has been refused by the school would be useful and advisable it will not be compulsory. As in Q.3., it is important that a parent's right to apply to the Body for a direction is not limited. There will, however, be a role for the secretariat services supporting the procedure to ensure that it is served by the information it needs.

6. Q What is the rationale for excluding primary admissions?

A Consideration of the need for an Exceptional Circumstances Process was part of the review of post primary admissions arrangements and the establishment of the Process was one of the recommendations of the Costello Report. Primary admissions arrangements were not reviewed at that time.

7. Q How does the Exceptional Circumstances Process fit with the Article 101 Complaints process administered by the Department and the Independent Admissions Appeal Tribunals run by the Education and Library Boards?

A The Exceptional Circumstances Process is completely separate and parallel to both of these processes:

- Parents can make a complaint to the Department where a school with places available has refused admission to a post-year 8 child on the grounds that admission would be "prejudicial to the efficient use of resources".
- Parents can lodge an appeal with an Independent Admissions Appeals Tribunal in respect of an unsuccessful application to a school. That Tribunal only has powers to uphold appeals and direct admission where schools make errors in the application of their admissions criteria: if it establishes that a school has not applied or not correctly applied its admissions criteria in a manner that has denied admission to an appellant.
- Parents will be able to apply to the Exceptional Circumstances Body if they have unsuccessfully sought admission for their child to a school but consider that their exceptional circumstances require that admission.

Parents will have the right to apply to all the appeal functions that relate to their particular circumstances.

8. Q If a large number of pupils have successful applications to the Exceptional Circumstances Body, and these pupils are admitted to schools on a supernumerary basis surely this will have a negative impact on the system including practical difficulties for the schools concerned?

A There is no doubt that if a large number of pupils have successful applications to the Exceptional Circumstances Body, this will have a negative impact on the system. This is why the Department has repeatedly stressed the necessity of ensuring that only the truly exceptional cases are successful. This should equate to a very small number of pupils. The Department anticipates that a relatively large number of parents may make application to the Body but that, by definition, only exceptional cases will be successful.

9. Q If a parent makes a successful claim of Exceptional Circumstances to the Body and the Body directs the school concerned to admit the pupil will transport assistance be provided?

A The presumption will be that in the vast majority of cases transport assistance will be provided.

10. Q How is the Exceptional Circumstances Process similar/different from the historical Special Circumstances Process?

A These two processes are not linked in any way. The Special Circumstances Process was a process that allowed parents (until Transfer 2009), to make the case that their child's grade in the Transfer Test had been adversely affected by circumstances beyond their control and applying in the period of the test. Boards of Governors of grammar schools considered these applications, decided whether a notional upgrade for each child should be applied, and then went on to apply their admissions criteria to those upgraded (or not) pupils in the normal way. The Department does not hold any information relating to these cases as these were considered by the Boards of Governors of the grammar schools concerned. If, from Transfer 2010, grammar schools continue to use a special circumstances process, this process will remain entirely separate and unrelated to the Exceptional Circumstances Process.

The Exceptional Circumstances Process is not related in any way to a child's academic ability nor to a parent's preference for the kind of education provided at a particular school. The Process is not a preference-based process at all, but instead reflects a pupil's **absolute requirement to attend one particular school and one school only**. The Process is intended to cater for the needs of pupils whose needs the system has been previously unable to address, for example; children who are looked after by an authority and who are not statemented, children who have been sexually abused, children with specific medical problems who are not statemented, children who are living in extreme family circumstances; for example death of a parent, have suffered severe trauma or who are unaccompanied asylum seekers.

11. Q Why have the regulations defined exceptional circumstances in this way?

A The kinds of circumstances that could be included are, by their very nature, so many and so varied as to be impossible to list exhaustively. If more options were to be listed this would only serve to narrow the discretion of the members of each Panel hearing applications. Successful applicants will have only one thing in common; they will have proved that they have an exceptional requirement to attend one particular school and one school only. The Body will have heard the pupil's case and used their discretion to agree that the circumstances described truly are exceptional, and will direct the school in question to admit the pupil. In this way a pupil who has not been able to gain admission to the school through the application of the school's criteria will be admitted on a supernumerary basis.

The regulations are worded in such a way as to provide a decision-making framework for the Body members in terms of the kinds of cases that may or may not be considered to be exceptional but in no way are these examples intended to be exhaustive. In other words, the fact that an example has not been listed in the regulations does not mean that that case could not be considered to be exceptional. Ultimately it will be for the members of the Body to decide during each hearing whether or not a case can be considered to be exceptional.

12. Q What does the phrase 'usual transfer route' mean? Why must a pupil first apply to the school in question and be refused admission before application to the Exceptional Circumstances Body?

A "Usual transfer route" means the annual process whereby year 7 children not in receipt of a Statement of Special Educational Need apply to post-primary schools in the order of their preference. If their application is to a school oversubscribed with applications, that school will determine which pupils to admit up to its admissions number by the application of its published admissions criteria.

Before the Body can make a direction (in response to an application) that a specific school must admit a pupil, it is sensible for all concerned that the far more straightforward route to admission (application to the school) has been exhausted. It is not sensible for the Body to be making or not making directions in respect of admissions that would actually occur as a result of a simple application to the school. Approximately 88% of all pupils already gain a place in their first preference school. If nearly all pupils whose circumstances require attendance at a specific post-primary school will gain admission to that through the direct route, it is sensible that this made prior to and exclusive of the Exceptional Circumstances Procedure.

No parent should opt out of the normal Transfer Procedure in the hope that their application under Exceptional Circumstances will be successful. Only a very small number of cases are likely to be successful and if a pupil opted out of the Transfer Procedure they will remain unplaced at the end of the procedure and will only be able to gain a place in a school which still has places available at the end of the process.

All of this information will be communicated to all parents in much greater detail once the regulations become law. A Guide for Parents with children in P7 about the Transfer 2010 process mentions the Exceptional Circumstances Process and in particular points out that an application to the Body can only be made after the child had failed to gain a place at the specified school. If a parent is making an application for their child for admission to year 8 after the Transfer Procedure has closed, or to any other year group, they should make application to the school using the normal route.

13. Q Will pupils admitted to schools on the direction of the Exceptional Circumstances Body be funded?

A Yes these pupils will be funded in the normal way.

14. Q In what way is the word 'parent' defined?

A In these regulations, as in all legislation relating to Education including that which governs the transfer procedure, open enrolment policy and admissions arrangements, the definition of 'parent' is that stated in the Education and Libraries Order 1986 and is as follows; "parent", in relation to a child or young person, includes a guardian and every person who has the actual custody of the child or young person'.

15. Q Can the Department provide some clarity on circumstances where non-statemented pupils with a special educational need could have a successful Exceptional Circumstances application?
- A As the regulations make clear, circumstances related wholly or mainly to the kind of education provided at a school cannot be considered to be exceptional. This means that for instance, a non-statemented child who had a reading difficulty could not apply to the Body for a direction that they be admitted to a particular school on the basis that that school had excellent additional facilities for pupils with reading difficulties. The Exceptional Circumstances Process cannot duplicate the already existent process for the placement of pupils with a special educational need. If that same child, however had a need of another nature, for instance, that they were looked after by an authority, had just joined a new foster family and needed to attend the school that the rest of their foster siblings attended, then the Body may consider those circumstances to be Exceptional and agree to direct the school to admit the pupil. The key point is that the Exceptional Circumstances Process seeks to ensure that pupils, **who have no other method** for gaining a place in the school **they must attend**, are admitted to those schools. The statementing process addresses the degree to which a pupil's special educational needs establish their requirement to attend one particular school. The Exceptional Circumstance Process cannot duplicate this facility.
16. Q Will the school be represented at the hearing?
- A The regulations state that the Board of Governors of the school will be given the opportunity to make written representations to the Panel or to appear before it in order to make oral representations.
17. Q Will a pupil who has been admitted to the school on the direction of the Exceptional Circumstances Body be supernumerary for the duration of their time in the school?
- A Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006) makes clear that pupils admitted in such a way will be supernumerary for the entire time they are registered at the school in question.
18. Q Why are cases based around the availability of transport, for instance in the case of pupils living in rural areas not considered to be exceptional?
- A These cases cannot be considered to be exceptional because of the large numbers of children involved and because, as with all pupils, subject to their meeting the eligibility criteria, transport assistance will be provided to pupils living in rural areas.

19. Q Why are cases based around a parent's desire to have their child educated in the medium of Irish not considered to be exceptional?

A Many if not most parents have compelling cases that their child should be educated in a type of school that they regard as important to the identity of their child. The Department seeks to meet these cases by ensuring that enough provision is available in each school sector and, in relation to the Irish-medium sector, this is an urgent priority. That is how children should be sure of places in the educational sector appropriate to them.

Department of Education

2 December 2009

CONSULTATION ON THE SCHOOL ADMISSIONS (EXCEPTIONAL CIRCUMSTANCES) REGULATIONS 2010 – INDEX OF RESPONSES

Consultation Response Number	Name of Respondent
1	Disability Action
2	The Teaching Council
3	Comhairle na Gaelscolaíochta
4	Stranmillis University College
5	North Eastern Education and Library Board
6	South Eastern Education and Library Board
7	Council for Catholic Maintained Schools
8	Belfast Education and Library Board
9	Newtownards Borough Council
10	Ulster Farmers' Union
11	Southern Education and Library Board
12	The Abbey Christian Brothers' Grammar School
13	Commissioner for Children and Young People
14	Western Education and Library Board
15	Antrim Grammar School
16	Lisburn City Council



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